

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ATAIN SPECIALTY INSURANCE COMPANY

V.

C.A. NO. 1:19-cv-98

GPS – GILS PROPERTY SERVICES, LLC;
JEFFREY KOBAK,
AHLBORG CONSTRUCTION CORP.;
BLACKSTONE MANAGEMENT, LLC;
WEST BAY ORTHOPAEDICS &
NEUROSURGERY, INC.; and
TRILOGY WBO REALTY LIMITED
PARTNERSHIP

ANSWER OF AHLBORG CONSTRUCTION CORP. AND COUNTERCLAIM

INTRODUCTORY STATEMENT

Defendant, Ahlborg Construction Corp. denies any and all allegations contained in Plaintiff's Introductory Statement that may be interpreted to require a responsive pleading.

PARTIES

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a

belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

6. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

7. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

JURISDICTION AND VENUE

8. Denied.

9. Denied.

FACTS

10. Admitted.

11. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

12. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

13. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

14. Admitted.

15. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

16. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

23. Defendant, Ahlborg Construction Corp. is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's complaint and leaves Plaintiff to its proof.

24. Denied.

25. Denied.

COUNT I

DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201-02

26. Defendant, Ahlborg Construction Corp. realleges and incorporates by reference paragraphs 1 through 25, as if fully set forth herein.

27. Denied.

28. Denied.

29. Denied.

WHEREFORE, Defendant, Ahlborg Construction Corp. demands that Plaintiff's complaint be denied and dismissed and that the Court declare that coverage under the policy issued by Atain does exist for Ahlborg Construction Corp. as an additional insured, that GPS-Gils Property Services, LLC is also covered under the policy for Plaintiff's allegations as set forth in Kobak v. GPS-Gils Property Services, LLC, et al., Providence County Civil Action No. PC2018-7067 and that Atain owes to GPS-Gils Property Services, LLC and Ahlborg Construction Corp. a duty to defend and indemnify for the allegations made by Plaintiff in Kobak v. GPS-Gils Property Services, LLC, et al., Providence County Civil Action No. 2018-7067.

**COUNTERCLAIM FOR DECLARATORY JUDGMENT AGAINST ATAIN
SPECIALTY INSURANCE COMPANY**

1. Plaintiff/Counterclaim Defendant, Atain Specialty Insurance Company ("Atain") issued a policy of commercial general liability insurance to GPS-Gils Property Services, LLC, policy number CIP 169135, with an effective policy period of March 11, 2014 to March 11, 2015.
2. On May 9, 2014, Defendant, GPS-Gils Property Services, LLC entered into a contract with Defendant, Ahlborg Construction Corp. to provide contracting services for the replacement of the roof at 120 Centerville Road, Warwick Rhode Island.
3. The contract entered into between Defendant/Counterclaim Plaintiff, Ahlborg Construction Corp. and Defendant, GPS-Gils Property Services, LLC provided that GPS-Gils Property Services, LLC was to carry appropriate commercial general liability insurance to cover it, Defendant/Counterclaim Plaintiff, Ahlborg Construction Corp., and the owner of the property at 120 Centerville Road, Warwick, Rhode Island, and that Ahlborg Construction Corp. and the

owner of the property were to be added as additional insureds to GPS-Gils Property Services, LLC's commercial general liability insurance under the Atain policy.

4. On May 13, 2014, the Damiano Insurance Agency of Cranston, Rhode Island issued an ACORD Certificate for Liability Insurance which states "Ahlborg Construction Corporation and the owner Trilogy WBO Realty Limited Partnership & West Bay Orthopaedics & Neurosurgery, Inc. are named as additional insureds as required by written contract for West Bay Orthopaedics' renovation project. The above wording is subject to policy forms, conditions and exclusions". The Certificate of Liability Insurance lists Atain Specialty Insurance Company as the primary commercial general liability insurance company providing coverage to GPS-Gils Property Services, LLC.

5. The policy of insurance for commercial general liability insurance coverage issued by Atain to GPS-Gils Property Services, LLC does provide commercial general liability insurance coverage for the incident alleged in the Providence County Superior Court complaint filed by Jeffrey Kobak, Kobak v. GPS-Gils Property Services, LLC, et al, Providence County Civil Action No. PC2018-7067 and does provide additional insured coverage for Ahlborg Construction Corp. and the owner of 120 Centerville Road, Warwick, Rhode Island, Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc.

6. The Kobak complaint sets forth facts that bring the injury alleged therein within the coverage provided by the Atain commercial general liability insurance policy.

7. The allegations in the Kobak complaint do not trigger any of the exclusions in the commercial general liability coverage of the Atain insurance policy.

8. Pursuant to the terms of the Atain insurance policy, Atain is obligated to provide a defense to GPS-Gils Property Services, LLC, Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc.

9. Pursuant to the terms of the Atain insurance policy, Atain is obligated to indemnify GPS-Gils Property Services, LLC, Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc. for any judgment that may enter against any or all of them in the Kobak lawsuit.

10. Atain has breached the terms of its insurance policy by refusing to indemnify GPS-Gils Property Services, LLC, Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc. in connection with the Kobak lawsuit.

11. A conflict of interest exists between Atain and GPS-Gils Property Services, LLC, Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc. with regard to the coverage provided by the Atain general liability insurance policy in connection with the Kobak lawsuit.

12. There is an actual dispute between Atain and GPS-Gils Property Services, LLC, Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc. under the Atain insurance policy.

13. Under Rhode Island law, Atain is obligated to pay for an attorney for Ahlborg Construction Corp., Trilogy WBO Realty Limited Partnership and West Bay Orthopaedics & Neurosurgery, Inc. of their choosing to represent their interest in the Kobak lawsuit. See Employer's Fire Ins. Co. v. Beals, 248 A.2d 397 (RI 1968).

14. The declaratory judgment action filed by Atain against Ahlborg Construction Corp. et al in connection with the Kobak lawsuit seeks to adjudicate the same factual issues that are subject to the Kobak lawsuit that is pending in the Rhode Island Superior Court, Providence County.

15. Pursuant to state and federal law, Ahlborg Construction Corp. is entitled to dismissal of Atain's declaratory judgment action or, alternatively, to a stay of Atain's declaratory judgment action until the conclusion of the Kobak lawsuit pending in the Rhode Island Superior Court. See, e.g., Wilton v. Seven Falls Co., 515 U.S. 277(1995); Employer's Fire Ins. Co. v. Beals, 248 2.d 397 (RI 1968).

WHEREFORE, Defendant/Counterclaim Plaintiff, Ahlborg Construction Corp. prays for an order and judgment declaring:

1. That the policy issued by Atain Specialty Insurance Company to GPS-Gils Property Services, LLC does provide commercial general liability coverage for the allegations raised in the Kobak lawsuit, C.A. No.: PC2018-7067.
2. That Ahlborg Construction Corp. is an insured and/or an additional insured under the commercial general liability policy issued by Atain to GPS-Gils Property Services, LLC.
3. That Atain has a duty to defend Ahlborg Construction Corp. in the Kobak lawsuit, C.A. No.: PC2018-7067.
4. That Atain has a duty to indemnify Ahlborg Construction Corp. for any judgment that may enter against it in the Kobak lawsuit, C.A. No.: PC2018-7067.
5. That Atain has breached the commercial general liability insurance policy issued to GPS-Gils Property Services, LLC by refusing to indemnify Ahlborg Construction Corp. in connection with the Kobak lawsuit, C.A. No.: PC2018-7067.

DEMAND FOR JURY TRIAL

Defendant/Counterclaim Plaintiff, Ahlborg Construction Corp. demands trial by jury.

Michael R. De Luca, Rhode Island Bar No.: 3663, is designated trial counsel.

Defendant,
Ahlborg Construction Corp.
By its Attorneys,

Michael R. De Luca
Michael R. De Luca, RI Bar No.: 3663
Gidley, Sarli & Marusak, LLP
One Turks Head Place, Suite 900
Providence, RI 02903
(401) 274-6644
(401) 331-9304
mrd@gsm-law.com

CERTIFICATION

I hereby certify that on the 17th day of April, 2019, I filed and served this document through the electronic filing system on the following party: Matthew W. Perkins, Esq. mperkins@lecomtelaw.com

/s/ Michael R. De Luca